(4)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 100 /2006

APPELLANT :- Sukhlal son of Laxman Chandra, aged about 45 years, R/o village Tushar, Police Station-Jaijaipur, District Janjgir-Champa [C.G.].
[IN JAIL]

VERSUS

RESPONDENT :- State of Chhattisgarh Through- Police Station-Jaijaipur, District Janjgir-Champa [C.G.].

CRIMINAL APPEAL UNDER SECTION 374 [2] OF CRIMINAL PROCEDURE CODE.

(17)

A.F.R.

6.4.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.100/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Sukhlal

Vs.

State of Chhattisgarh

Post for order today.

Sd-/
Dilip Raosaheb Deshmukh
Judge

A.F.R. 6.4.06 (18)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.100/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Sukhlal

Vs.

State of Chhattisgarh

PRESENT: -

Shri Shailendra Dubey, learned counsel for the accused-appellant.
Shri Sumesh Bajaj, G.A./Addl. Public Prosecutor for the State.

JUDGMENT

(Delivered on 6-04-2006)

This appeal is directed against the judgment dated 10-01-2006 delivered by Shri A.K.Pradhan, learned Additional Sessions Judge, Sakti, District-Bilaspur in Sessions Case No.116/2005 whereby the appellant was convicted under Section-307 of IPC and sentenced to undergo rigorous imprisonment for 5 years and fine of Rs.5,000/- and in default to undergo additional rigorous imprisonment for 5 months.

2. The factual matrix of the case is that on 03-05-2004 the appellant was present in the grocery shop in Village-Tushar, Police Station-Jaijaipur, District-Janjgir Champa along with his daughter aged about 11 years. Ajay Kumar Chandra PW-1, a boy aged about 11 years came there at about 05.45 A.M. for purchasing 250 grams of sugar. The appellant after weighing the sugar worth Rs.~~5/-~~ 4.50 delivered it to Ajay Kumar PW-1 who paid Rs.5/- to the appellant. Since the appellant did not have change, Ajay Kumar asked for a gutka pouch.

Upon this, the appellant suddenly got enraged, pushed Ajay Kumar on the ground and lifting an iron weight (Batt) of 5 K.G. hit him near the right ear and also on the left side of the head. Ajay Kumar Chandra became unconscious.

3. Khuburam Chandra PW-2, grandfather and Man Kumari PW-3, sister of Ajay Kumar Chandra, Bahartin Bai PW-4, Savitri Bai PW-5, mother of the appellant assembled on hearing shouts. Khuburam Chandra PW-2 immediately lodged F.I.R. in P.S.-Jaijaipur situated about 5 K.M. from the place of occurrence vide Ex.P-2. Dr. K.L.Uraon, Medical Officer, Primary Health Centre, Jaijaipur, PW-6 examined Ajay Kumar at 07.45 A.M. on the same day and found him to be in a semi-conscious condition with history of vomiting. He found the following injuries-

(A) One long contusion with laceration and bleeding on the middle of right external ear 6"x1"placed 1" away from the right angle of mouth to the middle of Right external ear caused by hard and blunt object.

(B) One lacerated wound deep to scalp bone with bleeding 1 $\frac{1}{2}$" x $\frac{1}{2}$" x $\frac{1}{2}$" on the left posto parietal region of scalp caused by hard and blunt object.

4. Ajay Kumar Chandra PW-1 was referred to surgical specialist and E.N.T. specialist for expert opinion at the District Hospital, Janjgir-Champa. Dr. K.L.Uraon PW-6 noted that the case needed immediate further management.

5. Ajay Kumar Chandra PW-1 was shifted in an unconscious state to Chhattisgarh Institute of Medical Science, Bilaspur (C.I.M.S.) at 02.05 P.M. by Khuburam Chandra PW-2. He was

immediately put on life saving drugs and I.V. Fluid and treatment was given. On 03-05-2004 Ajay Kumar Chandra did not regain consciousness and he had 3 to 4 episodes of vomiting along with convulsions. On 04-05-2004, C.T.Scan of head was done which revealed vide report Ex.P-19(A) Cerebral parenchyma showing small extra dural hametoma at left parietal, superiorly. Till 06-05-2004 Ajay Kumar Chandra did not regain consciousness and was restless. He was semi-conscious on 07-05-2004 & 08-05-2004 but was restless. For the first time on 09-05-2004 Ajay Kumar Chandra regained consciousness and this health status continued till 12th & 13-05-2004. On 13-05-2004 Ajay Kumar Chandra was discharged from the hospital on request. Upon discharge, the history of the injury was given as head injury due to assault by Batt on 03-05-2004. On the date of incident on being produced by the appellant an iron weight of 5 K.G. was seized vide Ex.P-14. On 03-05-2004, Plain soil and blood stained soil were also seized from the place of occurrence vide Ex.P-13 and sent to the Forensic Science Laboratory, Raipur for examination. Vide report dated 30-10-2004, presence of blood on the iron weight of 5 K.G. Article-C and blood stained soil was confirmed.

6. In reply to a query, Dr.K.L.Uraon PW-6 opined vide Ex.P-5 that the injury sustained by Ajay Kumar Chandra could be caused by the iron weight seized from the appellant. He further opined that if immediate treatment was not given, death of Ajay Kumar Chandra was possible. After completion of investigation, the appellant was prosecuted under Section-307 of IPC. The appellant abjured the guilt and pleaded that at the time of occurrence his mind was

imbalanced. The prosecution examined as many as 13 witnesses. No evidence in defence was adduced. The learned trial Judge relying upon the evidence led by the prosecution convicted and sentenced the appellant as aforesaid in para-1.

7. Shri Shailendra Dubey, learned counsel for the appellant has argued that on the date of occurrence, the appellant was ~~a person~~ of unsound mind. He pointed out to the report dated 25-02-2005 sent by the Professor& Head of Department of Medicine, Dr. B.R.Ambedkar Memorial Hospital, Raipur that the appellant who was admitted in the psychiatric Ward on 07-02-2005 was diagnosed to be suffering from psychosis after detailed examination and observation of ward behaviour. The testimony of Ajay Kumar Chandra PW-1, Man Kumari PW-3 and Savitiri Bai PW-5 was referred while arguing that since 5 to 6 years prior to the date of occurrence, the mental status of the appellant was not normal. It was therefore contended that since the appellant, at the time of occurrence, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law, he was entitled to the benefit of Section-84 of IPC.

8. It was also contended that no *mens rea* has been attributed by the prosecution to the appellant for assaulting Ajay Kumar Chandra with an iron weight. This also showed that the appellant was a person of unsound mind at the time of occurrence. No evidence was led by the prosecution to prove that the appellant had assaulted Ajay Kumar Chandra with an iron weight. In the alternative, it was also contended that the injuries sustained by Ajay kumar was not a

grievous injury since they did not fall within any of the parameters of Section-320 of IPC and therefore, the offence if any committed by the appellant did not travel beyond Section-324 of IPC. Considering the mental status of the appellant, learned counsel argued that the sentence awarded to the appellant should be reduced to already undergone by him.

9. On the other hand, Shri Sumesh Bajaj, learned Govt. Advocate has argued in support of the impugned judgment. He contended that the burden of proving insanity or unsoundness of mind at the time of the commission of the offence was entirely on the accused. No evidence was led by the accused to prove that at the time of commission of the offence he was suffering from such unsoundness of mind which can be termed as legal insanity which would exonerate him from criminal liability. It was argued that in order to constitute unsoundness of mind so as to bring the act within the ambit of Section-84 of the IPC, it must be shown that the unsoundness of mind was such as to make the person incapable of knowing the nature of act or that what he is doing is either wrong or contrary to law. Placing reliance on ***Oyami Ayatu Vs. State of Madhya Pradesh*** reported in **A.I.R.-1974-Supreme Court-216,** it was also contended that the mere fact that Ajay Kumar PW-1 or Khuburam Chandra PW-2 did not divulge any motive or *mens rea* for the appellant to assault Ajay Kumar Chandra PW-1 with the iron weight in the manner in which he did, would not *ipso facto* show that the appellant was of unsound mind. Reliance was also placed on ***Dhool Singh Vs. State of Rajasthan*** reported in **A.I.R.-2004-Supreme Court-1264** while arguing that the intention of causing death could

be gathered from the part of body where heavy blows were inflicted, the weapon of offence i.e. a very heavy iron weight (Batt) of 5 K.G. used in causing injuries, the force with which the injuries were caused and the nature of injuries sustained by Ajay Kumar Chandra.

10. Lastly in the alternative, it was contended that the fact that a minor boy aged 11 years was assaulted by a very heavy iron weight of 5 K.G. on vital parts i.e. near the right external ear and also on the left posto parietal region of the scalp, read with the C.T. Scan report and bed head ticket of C.I.M.S. and the opinion of Dr. K.L.Uraon, PW-6 showed that life of Ajay Kumar Chandra could not have been saved but for the proper timely treatment given at Chhattisgarh Institute of Medical Science. Thus Ajay Kumar Chandra had sustained injuries which were dangerous to life, thereby attracting clause-8th of Section-320 of IPC and was thus a grievous injury. The offence committed by the appellant would in no case fall below Section-326 of IPC. Looking to the manner of assault, the weapon used and the part of body where the injury was caused, nature of the injuries and age of the injured, the sentence of rigorous imprisonment for 5 years and a fine of Rs.5,000/- awarded by the trial Court did not call for any interference.

11. Having heard rival contentions, I have perused the record. The First question which requires consideration is whether the appellant was of unsound mind on the date and time of occurrence. Section-84 of the IPC is as under:

> **Section-84. Act of a person of unsound mind.**-Nothing is an offence which is done by a person who, at the time of doing it,

by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.

It is well settled that the crucial point of time on which the unsoundness of mind has to be judged is the time when the crime is actually committed. The burden of proving that at the time of commission of crime, the appellant was of unsound mind lies on the accused in order to be entitled to the exemption provided in Section-84. It must be legal unsoundness of mind which exonerates the accused from criminal liability. In order to constitute unsoundness of mind at the time of commission of the offence, it must be proved by the prosecution that at the time of commission of the offence, the offender was incapable of knowing the nature of his act or that he is doing what is either wrong or contrary to law. It is also required to be understood that medical insanity should be distinguished from legal insanity and unsoundness of mind since unsoundness of mind from medical point of view always will not necessarily mean legal insanity for claiming exemption under Section-84 of IPC. It is also well established that insanity is not *perse* defence, it has got to be proved. The defence of insanity cannot be admitted upon arguments merely derived from the character of the crime. Proof of unsoundness of mind also cannot be adjudged from mere absence of *mens rea* at the time of commission of the offence. It has to be adjudged from the conduct which preceded, attended and followed the crime. In ***Oyami Ayatu Vs. State of Madhya Pradesh*** reported in **A.I.R.-1974-Supreme Court-216**, it was held that the mere fact that death was caused

over a trifling matter would also not warrant a conclusion that the appellant was not a sane person.

12. In ***Dahyabhai Chhaganbhai Thakkar Vs. State of Gujrat*** reported in **A.I.R.-1964-S.C.-1563,** it was held that when plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section-84 of IPC can only be established from the circumstances which preceded, attended and followed the crime.

12. It was further held in **Dahyabhai** (Supra) that the doctrine of burden of proof in the contest of the plea of insanity may be stated in the following propositions: (1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea;* and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section-84 of IPC: the accused may rebut it by placing before the Court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings; (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the

offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasanable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including *mens rea* of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

13. In ***Ratan lal Vs. State of Madhya Pradesh*** reported in **AIR-1971-Supreme Court-778,** it was held that the crucial point of time at which unsoundness of mind has to be proved is the time when the crime is actually committed. The burden of proving this can be discharged by the accused from the circumstances which preceded, attended and followed the crime. In this case the defence had led evidence to show that the accused was in such a condition that if he was sitting, he would remain sitting, if he was to go then he would go and if he wished to fall in a river then he would fall. The condition of his mind was such that he used to set fire to his own clothes and house. It was also shown that after the commission of the offence of setting khaliyan of Nemichand on fire, on being asked, the accused said; "I burnt it and do whatever you want". The appellant in that case did not allow anybody to enter his house and put a lock on the house and his children took their food outside and the accused did not talk to anybody. Taking into account the overall situation, the Apex Court held that at the time of occurrence, the appellant was insane within meaning of Section-84 of IPC.

14. In the present case, there is absolutely no evidence to show that before the date of occurrence behaviour of the accused-

appellant was irrational. The allegation that he used to enter anybody's house and start abusing any person was categorically denied by Ajay Kumar PW-1. No evidence was led by the defence in this regard. There is nothing to show that after assaulting Ajay kumar, the accused started tearing of his clothes or started crying or behaved in an irrational manner or remained quite with a blank expression and did not answer questions. On the other hand, the evidence shows that the accused was sitting in his grocery shop with his daughter behaving normally. The testimony of Man Kumari PW-3 in paragraph-3 also shows that the appellant was talking rationally and normally. The evidence of Ajay Kumar PW-1 and Man Kumari PW-3 in para-3 clearly shows that on being demanded by Ajay Kumar, the appellant had weighed the sugar and handed it over to Ajay Kumar in a plastic foil. Thus, there is absolutely no evidence on record to show that the accused behaved in an irrational manner either prior to, at the time or after the incident. Therefore, the mere fact that the witnesses admitted that the accused was undertaking treatment for his mental condition would not by itself show that the accused-appellant was suffering from legal unsoundness of mind at the time of incident as required under Section-84 of IPC. It was also urged by the defence that normal relationship prevailed between the family of Ajay Kumar and the appellant. Statements of Ajay Kumar in para-4, Khuburam Chandra PW-2 and Man Kumari PW-3 were referred to substantiate this. However, be as it may this by itself would not either show that the appellant was of unsound mind at the time of commission of offence

or that the appellant did not assault Ajay Kumar by a heavy iron weight.

15. A perusal of the record shows that on 17-09-2004, the accused-appellant had made an application before the trial Judge that he was of unsound mind from 5 to 6 years, therefore, he should be proceeded with in accordance with Section-328 of the Cr.P.C. Pursuant to this application, upon a direction given by the trial Court, the appellant was admitted in the Psycatric ward of Dr. B.R.Ambedkar Hospital, Raipur on 07-02-2005. He was diagnosed to be suffering from psychosis after detailed examination and observation of ward behaviour. It was opined that the appellant had shown improvement with treatment and did not require further hospitalization. It was also opined that his judgment was found to be normal and he could understand legal proceedings. Upon receipt of such report, learned counsel for the accused-appellant had endorsed on the application dated 17-09-2004 that he does not press the application filed under Section-328 of Cr.P.C. on the basis of medical report. In a way, it tantamounts to giving up the defence that the appellant was a person of unsound mind on the date of occurrence. The treatment papers filed by the appellant were not proved by leading any evidence.

16. Ajay Kumar Chandra PW-1 has stated that at about 6 A.M., he went to purchase sugar from the shop of the appellant. He admitted in cross examination that Rupa Bai, the daughter of the appellant who was also of his age, was present with the appellant in the shop. It was further elicited by the defence in cross-examination that the

of seizure of 5 K.G. weight from the shop of the appellant, is proved by wholly unrebutted testimony of Lalji Shubham PW-9 who has proved seizure memo vide Ex.P-14 during the course of evidence. The iron weight was also sent for chemical examination to the Forensic Science Laboratory and presence of blood was confirmed by the Forensic Science Laboratory. Khuburam Chandra PW-2 has categorically stated that on hearing the noise when he reached the spot, he saw that Ajay Kumar was lying on the ground near the shop of the appellant with injuries on the head and ear which were suggestive of assault by an iron weight. The medical examination papers of Ajay Kumar Chandra by the C.I.M.S. also give the history of assault by an iron weight. The defence has not taken any such plea that Ajay Kumar had sustained injury in any other manner. It is thus established that after delivering sugar when Ajay Kumar asked the appellant to give him a Bombay Gutka Pouch, the appellant pushed him on the ground and repeatedly assaulted him by a heavy iron weight of 5 K.G. on vital parts.

19. Dr. K.L.Uraon PW-6 who conducted the medical examination of Ajay Kumar Chandra on 03-05-2004 stated that he saw one long contusion of 6"x1" placed 1" away from the right angle of mouth to the middle of right external ear with bleeding on the middle of right external ear and one lacerated wound deep up to scalp bone with bleeding 1 ½" x 1 ½" x ½" on the left posto parietal region of scalp. Ajay Kumar was in a semi conscious state and was referred to B.D.M. Hospital at Janjgir-Champa Ex.P-20. The indoor papers of treatment received by Ajay Kumar at the C.I.M.S. clearly go to show that despite administration of life saving drugs and best medical

treatment, Ajay Kumar regained consciousness only on 09-05-2004. It also shows that Ajay had history of nasal bleeding and vomiting and was irritable. Dr. K.L.Uraon PW-6 has opined that if Ajay kumar had not received proper medical treatment within 6 hours after the occurrence, death was possible.

20. Though the prosecution has not established *mens rea* for the accused-appellant to make an attempt on the life of Ajay Kumar by hitting him with a very heavy iron weight of 5 K.G. violently on the head and ear yet there is some indication in the cross examination para-4 of Khuburam Chandra PW-2 who denied on being specifically asked by the defence that he had sent Ajay Kumar to purchase sugar with only Rs.1/- . It cannot be ruled out that after weighing and delivering the sugar worth Rs.4.50 when Ajay Kumar gave only Rs.1/- to the appellant and also asked for Bombay Gutka Pouch, it annoyed the appellant and after pushing Ajay Kumar on the ground, he assaulted Ajay Kumar on the right ear and left side of head with a very heavy iron weight.

21. The appellant has placed reliance on ***Elkari Shankari Vs. State of A.P.*** reported in Volume-VIII-1989(2)-CRIMES-Page No.-702, ***Sanna Eranna Vs. State of Karnataka*** reported in **1983-Cr.L.J.-619** and ***Shama Tudu Vs. State*** reported in **1987-Cr.L.J.-618** while arguing that absence of *mens rea* would be a strong circumstance to indicate that the appellant was of unsound mind at the time of commission of offence. However, the facts and circumstances of the cases cited by the defence are clearly distinguishable since in those cases irrational behaviour of the accused-appellant prior to, at the time of and after the commission

of offence was explained. In the present case, there is no such situation. The appellant behaved like a wholly rational person till he delivered the sugar demanded by Ajay kumar. Even after assaulting Ajay Kumar, the behaviour of the appellant is not shown to be irrational. The only fact that he was taking some treatment for mental ailment would by itself, not show that the accused was suffering from unsoundness of mind at the time of occurrence as contemplated under section-84 of the IPC.

22. In ***Hari Mohan Mandal Vs. State of Jharkhand*** reported in **AIR-2004-Supreme Court-3687,** it was held that to justify the conviction under Section-307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although, the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need

not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

23. Relying upon ***Dhool Singh Vs. State of Rajsthan*** reported in **A.I.R.-2004-S.C.-1264,** I am of the considered opinion that the intention of the appellant can be gathered from the weapon of offence used (a very heavy iron weight of 5 K.G.), the tender age of the injured, a boy of 11 years, the vital parts of body where the weapon of offence was violently and repeatedly struck and the nature of injuries sustained by Ajay Kumar which leaves no room for any doubt that at the time of the incident, the appellant intended to cause the death of Ajay Kumar. The mere fact that no *mens rea* is shown to exist would not by itself in any manner dilute the gravity of offence.

27. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the appellant under section-307 of IPC and the sentence awarded thereunder are well founded and call for no interference. In the result, this appeal is dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Tumane